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ELASTICSEARCH, INC. and  
9 ELASTICSEARCH B.V.

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **OAKLAND DIVISION**

14 ELASTICSEARCH, INC., a Delaware  
corporation, and ELASTICSEARCH B.V., a  
15 Dutch corporation,

16 Plaintiffs,

17 v.

18 FLORAGUNN GmbH, a German corporation,

19 Defendant.  
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Case No. 4:19-cv-05553-YGR (AGT)

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS ELASTICSEARCH, INC.  
AND ELASTICSEARCH B.V.'S  
MOTION FOR SANCTIONS AGAINST  
FLORAGUNN REGARDING HENDRIK  
SALY**

1 Plaintiffs Elasticsearch, Inc. and Elasticsearch B.V. (“Elastic”) have moved the Court for  
2 an order imposing issue sanctions upon Defendant floragunn GmbH (“floragunn”) for refusing to  
3 produce its former employee and Chief Technology Officer Hendrik Saly for deposition and its  
4 misrepresentation of Mr. Saly’s unavailability to appear for a deposition. Specifically, Elastic  
5 requests that the Court instruct the jury:

- 6 1. floragunn could have, but refused, to make Mr. Saly available for deposition; and
- 7 2. it is established that Mr. Saly accessed the infringed Elastic code and copied from  
8 Elastic the twelve specific accused floragunn code segments that he “authored.”

9 The Court, having considered Elastic’s Motion, floragunn’s Opposition, Elastic’s Reply, the  
10 supporting Declarations, the exhibits attached thereto, the pleadings and filings in this action, all  
11 matters of which the Court may take judicial notice, and arguments of the parties at any hearing,  
12 hereby **GRANTS** Elastic’s Motion.

13  
14 **IT IS THEREFORE ORDERED** that the Court shall instruct the jury that (1) floragunn  
15 could have, but refused, to make Mr. Saly available for deposition, and (2) it is established that  
16 Mr. Saly accessed the infringed Elastic code and copied from Elastic the twelve specific accused  
17 floragunn code segments that he “authored.”

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19 Dated: \_\_\_\_\_

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Honorable Alex G. Tse  
United States Magistrate Judge